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08/03/2021

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BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2

IA 748 of 2020 in CP(IB) 550/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.03.2021

Name of the Company: George Samuel RP For Shreem Spa &  
Resorts Ltd

Section 33 & 34 IBC, 2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

(through video conferencing/physical)

None appeared on behalf of Applicant.

The order is pronounced in the open court vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL

Dated this the 3rd day of March, 2021

MANORAMA KUMARI  
MEMBER JUDICIAL



BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

I.A. No. 748 of 2020 and IA 892 of 2020  
in  
CP(IB) No. 550 of 2018

**IN IA 748 OF 2020**

**In the matter of:**

Mr. George Samuel  
RP of M/s Shreem Spa & Resorts Ltd.  
Regn. No. IBBI/IPA-003/IP-N00043/2017-18/10319

**Having office at:**

110, Atria B,  
Sargasan Circle,  
Gandhinagar-382421

...Applicant

**IN IA 892 OF 2020**

**In the matter of:**

Mr. Prakash Jalan&Anr.

Versus

...Applicant

Mr. George Samuel

RP of M/s Shreem Spa & Resorts Ltd.

... Respondent No. 1

Central Bank of India

(Member of COC)

Shreem Spa and Resorts Pvt. Ltd.

...Respondent No. 2

State Bank of India

(Member of CoC)

Shreem Spa and Resorts Pvt. Ltd.

...Respondent No. 3



*Chackragar*

*Sharma*



**Order delivered on 03.03.2021.**

**Coram:**

**Hon'ble Ms. ManoramaKumari, Member (J)**

**Hon'ble Mr. ChockalingamThirunavukkarasu, Member (T)**

**Appearance: IN IA 748 OF 2020**

Mr. Arjun Sheth, advocate, ... for the Applicant.

Mr. Sanjay Majmudar, PCA ... for the proposed Resolution Applicant.

Mr. M.N. Marfatia, advocate ...for the Suspended Management.

**Appearance: IN IA 892 of 2020**

Mr. Sanjay Majmudar, PCA, ...for the Applicant.

Mr. Arjun Sheth, advocate ... for the RP.

Mr. M.N. Marfatia, advocate ...for the Suspended Management.

**COMMON ORDER**

**[Per: Ms. ManoramaKumari, Member (J)]**

1. The instant application is filed by the RP under section 33 and 34 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IB Code") in Company Petition (IB) No. 550 of 2018 for seeking liquidation of the Corporate Debtor.
2. The facts of the case are stated herein:

2.1 The joint petition was filed in CP(IB)No. 550 of 2018 by Financial Creditors viz., Central Bank of India and State Bank of India under Section 7 of the IB Code, seeking initiation of Corporate Insolvency Resolution Process



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(hereinafter referred as "CIRP") against the Corporate Debtor. The said Application was admitted by this Adjudicating Authority vide its Order dated 23.09.2019 and appointed Mr. George Samuel as Interim Resolution Professional (hereinafter referred as "IRP") of the Corporate Debtor.

2.2 It is found that the Committee of Creditors (hereinafter referred as "CoC") in its First Meeting held on 23.10.2019 decided for continuation of the IRP as RP.

2.3 It is a matter of record that in the Sixth Meeting of the COC held on 06.03.2020, it was decided to apply for extension of CIRP period by 90 days beyond 180 days and the same was allowed by this Adjudicating Authority vide order dated 20.03.2020.

2.4 It is a matter of record that the CIRP was extended for further 90 days. Apart from the additional days as an exemption of the lockdown period of 129 days, the CIRP period got ended on 25.10.2020. Since, there was no Resolution Plans which are compliant as per the IBC, 2016 and Regulations thereto are received, the liquidation is the only alternative remedies available to the CoC.



*Shreeharish*

*Chakraborty*



2.5 It is further submitted that even after giving adequate time and also extensions of submission of the Resolution Plan was allowed, however, only one Resolution plan received, which is still non-compliant. In view of that, considering the objective of the IB Code, the CoC decided to go for liquidation of the Corporate Debtor (which is reflected from page no. 29 onwards of the minutes of the meeting).

3. During the pendency of the instant application an **IA 892 of 2020** was filed by the prospective resolution Applicant with the following prayer:

- (i) *To direct the Resolution Professional and the Committee of Creditors to consider the final resolution plan dated 16.10.2020 and set aside the decision taken by the CoC in their meeting dated 22.10.2020 to proceed with the liquidation of the Corporate Debtor.*
- (ii) *To grant further time for consideration of the Revised Resolution Plan given the extraordinary situation prevailing in Ahmedabad, Indian on account of the COVID-19 pandemic.*

3.1 The instant application is filed jointly by one Mr. Prakash Jalan & Anr with Gensol Engineering Limited (hereinafter referred to as "Resolution Applicant/Joint Resolution Applicant") who has been duly authorized by Gensol Engineering Limited to present the plan.

3.2 It is submitted that the Applicant has filed the resolution plan on 15.07.2020 (**Annexure-1**) which was duly been discussed in the meeting of the CoC held on 20.08.2020, wherein, CoC had conveyed to improve the offer price. In view of such communication received from CoC, the



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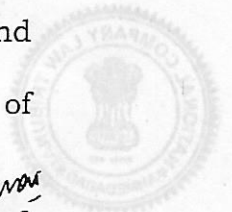
Applicant submitted revised improved plan on 09.10.2020 after incorporating the enhancements and the amendments by revising to Rs. 24.01 crores as against of Rs. 11.91 crores made earlier, which include the total payment to the Financial Creditors of Rs. 24.01 crores to be made in the form of cash component of Rs. 18.31 crores and payment in the form of redeemable preference shares of Rs. 5.01 crores. **(Annexure-3 is the copy of the said plan appended with the application).**

3.3 It is further submitted that the said resolution plan was taken up for discussion in the meeting of the CoC held on 15.10.2020, where the Resolution Applicant was also invited to participate through video conferencing. During the course of the meeting, the Resolution Applicant was conveyed that the Plan still contains certain technical non conformities which require some modifications to which the Resolution Applicant agreed to comply. CoC further indicated that instead of part payment being proposed in the form of shares, the CoC would be more comfortable, if the entire payment is made in cash. After making deliberations, the revised payment structure was proposed in the form of two options- one option being to pay the entire offer price of Rs. 24 crores in cash in different instalments before March 2022, whereas, the second option was payment partly in cash and partly by way of



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preference shares comprising of cash component of Rs. 20 crores and preference shares of Rs. 4 crores.

3.4 It is further indicated by the CoC, if the final revised resolution plan meets all the mandatory requirements and it also contains the revised offer then the same may be considered by them after putting the same to approval process.

3.5 In view of the above, the Applicant has submitted the final modified and improved plan dated 16.10.2020 (submitted on 02.11.2020, a delay caused was on account of prevailing COVID-19 situation). In the said resolution plan, the Applicant converted their offer of payment to Financial Creditors entirely in cash instead of earlier proposed payment of partially in cash and partially in preference shares and the total plan amount was kept at Rs. 24.01 crores.

3.6 However, during the interregnum the Resolution Professional vide letter dated 22.10.2020 informed the Resolution Applicant that based on some legal opinion received on the maximum number of days that can be availed for the lockdown exemption as per Regulation 40C of the CIRP Regulation, an urgent meeting of the CoC of the Corporate Debtor was convened on 22.10.2020 to decide as regards the interpretation as to the number of



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days of lockdown can be availed under the said Regulation 40C. Since there are different views of the different NCLTs, it has been informed by the RP that for paucity of time, since apparently the CIRP period of extension was getting over on 25.10.2020, the CoC has voted in favour of the liquidation.

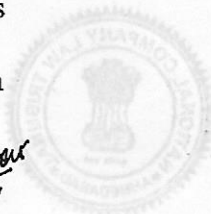
3.7 The Applicant further submitted that it is quite surprising for them that even after revising the plan the CoC decided to go for liquidation in its meeting dated 22.10.2020. Though, the Resolution Applicant has already confirmed that he is willing and agreeable to submit the final improved Resolution Plan at the indicative offer of around Rs. 24 crores. Thus finding no alternative the Applicant filed the instant application.

3.8 On receipt of the notice, RP filed the reply dealing with the statements of the Applicant made in the application and submitted that the contents of the application are contradictory and has given the detailed reply.

3.9 The learned lawyer for the RP submitted that in the 8<sup>th</sup> meeting of the CoC dated 27.07.2020, the Applicant was invited and informed that there were non-compliances that were seen in the resolution plan submitted by the Applicant and was called upon to rectify the same. It was also intimated that the value offered was much lower in

*Shri. A. K. Singh*

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the expectation by the CoC to which the Applicant submitted that they would revisit and make the suitable revision. Thereafter, the RP informed vide e-mail dated 01.08.2020, intimating the last date of submission of the resolution plan with all rectifications by 6 p.m. of 04.08.2020. However, the Applicant informed by way of email that they will submit the revised plan only by 15.08.2020 showing reason of delay due to pandemic and festivals. However, vide letter dated 14.08.2020, the Applicant informed that it was not willing to provide any undertaking qua regulation 39, was not able to provide the projections, was not able to sign the RFRP document, etc and further intimated that, the Applicant was not willing to provide management of the affair of the Corporate Debtor for implementation of the plan, vide said letter. It is also informed that no credit rating be taken of the Applicant without prior permission of the Applicant. The copy of the said letter dated 14.08.2020 issued by the Applicant, is annexed along with the reply at page no. 120 as **Annexure-L**, which is self-explanatory.

3.10 Thereafter, the Respondent on 18.08.2020 filed email inviting the Applicant to join in the next CoC meeting to be held on 20.08.2020. During the said meeting, the Applicant was present and accordingly it was informed that the Applicant had not rectified all the non-



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conformities. However, he wishes to negotiate and revise the offer and assured that pending technical parts will be complied during the negotiation phase.

3.11 It is further submitted by the Respondent(RP) that they proposed for joint inspection between 22.08.2020 to 02.09.2020, wherein, the joint inspection would take place on 03.09.2020. It is further submitted that the Applicant was invited to join in the CoC meeting held on 16.09.2020 and called upon to submit their final resolution plan. However, the Applicant was put certain conditions and thereby the matter got delayed. Since sufficient time was given to the Applicant to rectify the non-conformities and resolve the mandatory provision but the Applicant has failed to comply.

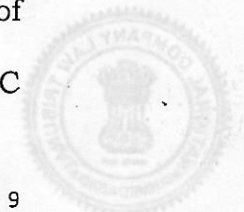
3.12 It is observed in the 12<sup>th</sup> meeting of the CoC that the offer made by the Applicant is more or less the same as the previous one. Hence the CoC decided to go for liquidation.

4. Heard the Applicant of **IA 748 of 2020** and also heard the learned counsel on behalf of the Applicant of **IA 892 of 2020** (Prospective Resolution Applicant). Gone through the records and the documents, it is found that the CoC in its 13<sup>th</sup> meeting decided to go for liquidation as the CIRP has already been expired. Even after the extension of time and exemption of lockdown period no viable resolution plan received, hence CoC



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has decided in favour of the liquidation with 100% voting share.

5. It is important to note that under the Insolvency and Bankruptcy Code, 2016, the role of the Committee of Creditors is very important. One of the important tasks of the CoC is to approve the resolution applicant with 66% voting share if the resolution plan meets the requirements stipulated as per Section 30(2) of the IB Code. There is no provision in the Code to suggest that Adjudicating Authority will have a power to modify or change the resolution plan, if the plan is rejected by the CoC with majority of vote, thus the business decisions to decide the fate of the Corporate Debtor lie on the shoulder of the CoC, because the creditors are the one who is going to bear the loss of the Insolvency. Hon'ble NCLAT in the matter of ***M/s Bhaskar Agro Agencies v/s M/s Super Agri Seeds Pvt. Ltd.*** recognized the technical expertise of the Financial Creditors and observed that; *so far as the liability or feasibility of 'Resolution Plan' is concerned, the Adjudicating Authority or the Appellate tribunal cannot sit in the appeal over the decisions of the CoC.*"

6. It is also to be noted that this Adjudicating Authority has no jurisdiction to interfere in the commercial wisdom of the CoC as observed in ***K. Sasidhar's*** case and subsequently also reiterated by Hon'ble Supreme Court of India in its judgement



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passed in Civil Appeal No.8766-67 of 2019- **Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors** observed as follows:

*"The commercial wisdom of the Committee of Creditors cannot be interfered into by the Adjudicating Authority. The Hon'ble Supreme Court affirmed K. Sashidhar's judgement that neither the Adjudicating Authority nor the Appellate Authority has been endowed with the jurisdiction to reverse the commercial wisdom of the CoC.*

*The Hon'ble Supreme Court took the view that the commercial wisdom has been exercised by the CoC after taking into count all the factors leading to maximisation of asset value of the Corporate Debtor, but the ultimate discretion of what to pay and how to pay each class or sub-class of creditors lies with the CoC."*

7. Under the facts and circumstances as narrated above, we pass the following orders:

- a) The moratorium declared under Section 14 of the IB Code shall cease to have effect from the date of the order of liquidation.
- b) The Liquidator is further directed to issue public announcement stating that the Corporate Debtor is in liquidation and as far as possible, shall try to dispose of the Corporate Debtor as a going concern.



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- c) The Liquidator is required to send certified copy of this order to the authority with which the Corporate Debtor is registered.
- d) Subject to Section 52 of the IB Code, no suit or other legal proceedings shall be instituted by/or against the Corporate Debtor. However, a suit and other legal proceedings may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of this Authority.
- e) This Authority makes it clear that para (d) hereinabove shall not apply to legal proceedings in relation to such transactions as notified by the Central Government in consultation with any financial sector regulator.
- f) The Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- g) All the powers of the Board of Directors, Key Managerial Personnel and the Partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be vested with the Company Liquidator. In addition to this, the Company Liquidator shall exercise the powers and duties as enumerated in Sections 35 to 50, 52 to 54 of the IB Code, 2016, read with Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- h) The personnel of the Corporate Debtor shall extend all assistance and co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.



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- i) The Company Liquidator shall be entitled to charge such fee for the conduct of the liquidation proceedings in such a proportion to the value of the liquidation estate assets as may be specified by the Board.
- j) The Registry is directed to communicate this order with immediate effect to the concerned Registrar of Companies, registered office of the Corporate Debtor and Company Liquidator for information and compliance
8. In view of the above, the instant IA 748 2020 in CP(IB) 550 of 2018 so filed by the RP under Section 33 and 34 of the IB Code, 2016 is allowed and the Adjudicating Authority passes an order for initiation of liquidation of the Corporate Debtor viz., M/s Shreem Spa & Resorts Pvt. Ltd. filed under Section 7 of the IB Code. The RP namely Mr. George Samuel, shall act as the Liquidator for the purpose of liquidation of the Corporate Debtor.
9. Accordingly, the instant IA is allowed and stands disposed of with the above observations.

*Shankar*

**CHOCKALINGAM THIRUNAVUKKARASU**  
Adjudicating Authority  
Member (Technical)



*Manorama*

**MANORAMA KUMARI**  
Adjudicating Authority  
Member (Judicial)

